IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 17521 of 2005(J)

AGAINST THE ORDER IN EP.29/04 IN
OS.234/1998 of MUNI-MAGI.COURT,PONNANI

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PETITIONER:

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1. ABOOBACKER, S/O.KADAPARAMBIL KUNHUTTY,
KUTTIPPALA AMSOM, NELLISSERY DESOM,
PONNANI TALUK.

2. ASHARAF, S/O.MOOSA,
AGED 27 YEARS, KOLANGARA VEETIL,
ALAMCODE, PONNANI TALUK.

BY ADV. SRI.JIJO PAUL
SRI.BABU S. NAIR

RESPONDENTS:

SIVASANKARAN, S/O.PADATH VELU,
KAPPOOR AMSOM, DESOM, OTTAPPALAM TALUK.

BY ADV. SRI.P.CHANDRASEKHAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 17521/2005

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE ORDER DATED 23.3.2005 PASSED BY THE MUNSIFF MAGISTRATE, PONNANI IN E.A. NO. 49/2005 IN E.P. NO. 29/2004 IN O.S. NO.234/1998

EXT.P2: COPY OF THE ORDER DATED 23.3.2005 PASSED BY THE MUNSIFF – MAGISTRATE, PONNANI IN E.A. NO. 39/2005 IN E.P. NO. 29/2004 IN O.S. NO. 234/1998

EXT.P3: COPY OF THE ORDER DATED 17.6.2002 IN E.P. NO. 307/2001 IN O.S. NO. 234/1998 PASSED BY THE MUNSIFF MAGISTRATE, PONNAI.

EXT.P4: COPY OF THE ORDER OF THIS HON'BLE COURT IN CRP NO. 1732/2002 DATED 27.1.2003

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 17521 of 2005

Dated this the 7th day of June 2007

JUDGMENT

I do not find any warrant for interfering with Ext.P1 and Ext.P2 orders passed by the learned Munsiff in a proceedings for execution of a money decree under the visitorial jurisdiction of this court under Article 227. The learned Munsiff has noticed that in a previous Execution Petition it was found that the petitioners were liable to be arrested and detained and this court was not inclined to interfere with that finding. This court only kept in abeyance the order of arrest subject to certain conditions which the court below noticed was not complied with by the petitioners.

2. Even though an unconditional stay was granted when the writ petition was admitted, later on 12.1.2006 the continuance of the stay order was made conditional on the petitioners paying a sum of Rs.25,000/- towards decree debt on or before 12.1.2006.

Sri.Jijo Paul the learned counsel for the petitioners submit that the best of his information the above payment was made. The learned counsel for the respondent seeks time to verify.

3. In the nature of the orders which are being passed hereunder, I am of the view that it is not necessary that this writ petition kept pending. As already indicated there is no warrant for interfering with Exts.P1 and P2. At the same, time purely on considerations of indulgence, there will be a direction that if on verification by the court below, it is seen that the petitioners have actually paid a sum of Rs.25,000/- as directed by this court to be paid on or before 12.2.2006, the court below will keep further proceedings in continuance to Exts.P1 and P2 in abeyance, on condition that each of the petitioners pay Rs.7,500/-(Rupees seven Thousand Five Hundred only) (total of Rs.15,000/-) (Rupees Fifteen Thousand only) on the first of every month commencing on first July 2007 till such time as the entire decree debt is wiped off. Once the the entire decree debt is wiped off, it is open to the petitioners to file an application for recording full satisfaction of the decree. It is made clear that in

the event of any default in remittance of any two instalments the above order of stay will stand vacated and impugned orders will become operative.

PIUS C. KURIAKOSE,
JUDGE.

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